United Nations S/2017/435

Security Council

Distr.: General
17 May 2017

Original: English

Report of the Secretary-General on the implementation of the political agreement of 31 December 2016 in the Democratic Republic of the Congo

I. Introduction

1. The present report covers developments in the Democratic Republic of the Congo since 27 March 2017 and is submitted pursuant to resolution 2348 (2017), in which the Security Council requested the Secretary-General to update it in writing every 45 days on political and technical progress and obstacles to the implementation of the political agreement of 31 December 2016.

II. Key political developments relating to the implementation of the agreement

2. Continued divisions between political factions in the Democratic Republic of the Congo have threatened to undermine the broad consensus achieved with the signing of the political agreement of 31 December. On 27 March, the Episcopal Conference of the Democratic Republic of the Congo ended its mediation efforts, citing what it referred to as a continued lack of consensus among political leaders over the special arrangements for the implementation of the political agreement. Negotiations reached an impasse over the appointment of a new Prime Minister and the selection of the Chair of the National Council for Oversight of the Agreement and the Electoral Process. On 28 March, the Episcopal Conference reported to the President, Joseph Kabila, on its efforts to exercise its good offices and recommended that he carry out consultations with political actors with a view to breaking the deadlock. On 3 and 4 April, the President held consultations with stakeholders from across the political spectrum, including dissident members, led by Joseph Olenga Nkoy, of the opposition platform the Rassemblement des forces politiques et sociales de la République démocratique du Congo acquises au changement (Rassemblement), with a view to overcoming the impasse. The leader of the Rassemblement, Félix Tshisekedi, declined the President's invitation in protest over the participation of the dissident wing of the Rassemblement in the consultations. The Rassemblement called for countrywide mobilization, including a stay-at-home day on 3 April, which was largely observed in Kinshasa and partially in Mbuji-Mayi, Kasai Oriental. The Rassemblement also expressed support for the general strike called by civil servants, which was observed to some extent on 5 April in Kinshasa and provincial capitals. Demonstrations called for by the Rassemblement from 10 to 24 April were largely unsuccessful owing to the limited

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capacity of the opposition to mobilize popular support, the preventive deployment of security forces and the official ban on public demonstrations because of security concerns.

3. On 5 April, in his State of the Nation address before Congress, the President invited members of the Rassemblement to harmonize their views and propose a list of candidates for the position of Prime Minister. He stated that he intended to announce the appointment of a new Prime Minister within 48 hours; the nomination of a Chair of the National Council for Oversight of the Agreement and the Electoral Process, following the adoption of a law on its functioning; the establishment of a transitional government, in line with the provisions of the political agreement; and the holding of elections in accordance with a calendar to be published by the Independent National Electoral Commission. The President also warned against foreign interference in the electoral process. Reacting to the address, the opposition, mainly the Rassemblement, expressed concern about further delays in the electoral process and denounced attempts by the Majorité présidentielle to fragment the Rassemblement.

4. On 6 April, the Prime Minister, Samy Badibanga, presented his resignation to the Head of State. On 7 April, the President appointed Bruno Tshibala as Prime Minister. Mr. Tshibala had been Deputy Secretary-General of the Union pour la démocratie et le progrès social (UDPS) until he was excluded from the party on 5 March and is a member of the dissident wing of the Rassemblement. On the one hand, a number of national actors, including the Episcopal Conference and the Rassemblement, as well as international partners, including Belgium, France, the United States of America and the European Union, stated publicly that the appointment of the Prime Minister was not in line with the provisions of the political agreement. On the other hand, the dissident wing of the Rassemblement, the Majorité présidentielle and several regional organizations, including the Economic Community of Central African States and the Southern African Development Community, welcomed the appointment of the new Prime Minister and the steps taken by the Government to advance the implementation of the political agreement. Between 24 and 26 April, a group of seven large religious denominations, the opposition party Union pour la nation congolaise (UNC), led by Vital Kamerhe, the dissident wing of the Rassemblement and the Majorité présidentielle rejected the statement issued by the Episcopal Conference on 21 April that the appointment of the new Prime Minister was not in line with the political agreement.

5. On 27 April, at a session chaired by the Speaker of the National Assembly, Aubin Minaku, and the President of the Senate, Léon Kengo wa Dondo, five of the seven main groups that had signed the agreement of 31 December also signed the special arrangements for its implementation. The five groups included the Majorité présidentielle; Opposition républicaine, led by Kengo wa Dondo; opposition groups led by Vital Kamerhe; civil society representatives who had signed the political agreement of 18 October 2016; and the dissident wing of the Rassemblement. On 28 April, the coalition Front pour le respect de la Constitution, led by the Mouvement pour la libération du Congo (MLC), also signed the agreement, following consultations with the leader of MLC, Jean-Pierre Bemba.

6. The special arrangements stipulate that the Prime Minister should be selected from the Rassemblement and that the 28 members of the National Council for Oversight of the Agreement and the Electoral Process should propose a consensus candidate for the position of Chair of the Council, who is to be assisted by three Vice-Chairs, representing the Majorité présidentielle, the Front pour le respect de la Constitution and the opposition groups that signed the agreement of 18 October 2016. The Rassemblement, led by Félix Tshisekedi, refused to sign the special

arrangements, arguing that they were no longer in consonance with the terms initially negotiated under the auspices of the Episcopal Conference and that they were therefore no longer in line with the agreement of 31 December, which stipulates that the Government is to be led by a Prime Minister presented by the opposition groups that did not sign the agreement of 18 October, that is, the Rassemblement and nominated by the President of the Democratic Republic of the Congo in line with article 78 of the Constitution. Under the agreement, the Council is to be presided over by the Chair of the Wise Persons Council of the Rassemblement.

7. Since the signing of the special arrangements, the Episcopal Conference has stated its readiness to participate in the implementation of the political agreement of 31 December as an observer. Meanwhile, UDPS and the Rassemblement are advocating direct talks between the opposition and the ruling majority, including engagement with the President, to harmonize views on contentious issues relating to the implementation of the agreement. The Majorité présidentielle maintains that the Episcopal Conference has failed to maintain its status as a neutral broker and is firmly opposed to the possibility of a "third dialogue".

8. On 8 May, the President issued a decree appointing a new transitional government comprising 59 members, including the Prime Minister. The Government, which is dominated by the Majorité présidentielle, includes opposition members who signed the agreement of 18 October 2016 and representatives of the dissident wing of the Rassemblement. The Rassemblement wing led by Félix Tshisekedi said that the Government was illegitimate.

III. Key electoral developments relating to the implementation of the agreement

9. The voter registration process has advanced owing mainly to popular support and high rates of enrolment, despite security challenges and funding constraints. The Independent National Electoral Commission maintains 31 July as the official deadline for the completion of the voter registration process. However, an extension of the deadline may be necessary in some areas in view of security, technical and logistical challenges.

10. The United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) and the United Nations Development Programme continued to provide support to the voter registration process. On 19 April, MONUSCO completed the air delivery of some 4,000 tons of registration materials to hubs and antennae of the Independent National Electoral Commission throughout the country. On 27 April, according to the Commission, more than 22.3 million potential voters had been registered in 13 of the 26 provinces, which represents 54 per cent of the estimated electorate nationwide.

11. On 30 April, the Commission launched the update of the voter register in 4 of the 10 targeted provinces (Bas-Uélé, Kongo Central, Kwilu and Kwango). On the same day, the Commission also launched the process in the capital cities of Kasai Oriental, Lomami and Sankuru, while temporarily postponing registration in Kinshasa, Kasai Central and the Kasai provinces. The Commission expects to include the Congolese diaspora in the update of the voter register. On 5 May, the Chair of the Commission, Corneille Nangaa, indicated that registration in Kasai and Kasai Central might not proceed as scheduled because of the fragile security situation resulting from clashes between the national security forces and the Kamwina Nsapu militia, which had hampered voter registration activities in several areas in the Kasai region. My Special Representative continues to engage with

political and influential actors hailing from the Kasai provinces to play an active role in advancing the registration process. He has also engaged with the Government on the need to strengthen security in the region as a prerequisite for peaceful elections. MONUSCO is further exploring how to utilize its strengthened presence in the Kasai region in support of the voter registration process.

IV. Restrictions on political space and violence relating to the implementation of the political agreement and in the electoral context

12. The situation with regard to democratic space remained somewhat restricted during the reporting period. On 3 April, in Kindu, Maniema province, seven members of the Rassemblement were arbitrarily arrested by the national police during a stay-at-home day and later released, even though a caravan organized by the ruling Parti du peuple pour la reconstruction et la démocratie on 1 April, in the same town, had been allowed to proceed. On 10 April, during protests led by the Rassemblement against the appointment of Bruno Tshibala, security forces were preventively deployed in the main cities, including Beni, Bukavu, Bunia, Kindu, Kinshasa, Kisangani, Lubumbashi, Matadi and Mbandaka. MONUSCO documented human rights violations perpetrated mainly by the police, as well as by the military, throughout the country on 10 April. At least five people were wounded in Matadi (Kongo Central) and Kongolo (Tanganyika) by national police officers, as well as in Kinshasa by the military police, and at least 140 arrests were documented throughout the country, mainly in Kinshasa and Lubumbashi (Haut-Katanga). Most of those arrested were subsequently released. On 24 April, in Lubumbashi, the residence of parliamentarian and provincial Coordinator of the Rassemblement, Gabriel Kyungu, was surrounded by the police in an attempt to prevent the organization of a political meeting to commemorate the introduction of the multiparty system in the country in the early 1990s.

V. Confidence-building measures

13. There has been no significant progress towards the implementation of the confidence-building measures in the political agreement. At least 132 political prisoners remain in detention. On 3 May, the local and international media reported that, on 29 March, the ad hoc commission of the Episcopal Conference established to look into high-profile cases of political leaders facing judicial proceedings had submitted a confidential report to the President pointing to political interference in the judiciary and recommending the immediate release of the leader of the opposition party Solidarité congolaise pour la démocratie, Jean-Claude Muyambo, and the immediate withdrawal of the arrest warrant against an opposition leader, Moïse Katumbi. The following day, the Speaker of the National Assembly accused the Episcopal Conference of breaching the confidentiality of the work of the ad hoc commission by leaking the report and argued that the recommendations put forward by the Conference contained contradictions that undermined the independent functioning of the judiciary. On 5 May, the Conference released a statement rejecting the accusation and asserting that it had submitted the report to the President only and had shared it with Moïse Katumbi at the request of the President.

VI. Good offices for the implementation of the agreement

14. In line with his good offices mandate, my Special Representative met the various signatories of the political agreement of 31 December in order to reconcile their positions and facilitate the full implementation of the transitional arrangements. Discussions with the Majorité présidentielle, the Rassemblement and UDPS, among others, have revealed differences stemming from diverging interpretations of the provisions of the agreement, in particular those relating to the appointment of the new Prime Minister and the Chair of National Council for Oversight of the Agreement and the Electoral Process. At the same time, the negotiations on the special arrangements have been marked by a constant shifting of alliances within the Rassemblement, which has contributed to its fragmentation. The lack of cohesion within the ranks of the opposition is also evident in the apparent rapprochement between some mainstream Rassemblement members and the new Prime Minister. Some mainstream Rassemblement leaders voiced their intention not to participate in the transitional government, while those hoping for ministerial portfolios were expelled by the leadership of the platform.

15. My Special Representative also engaged with the Episcopal Conference, the Independent National Electoral Commission and counterparts in the diplomatic corps to promote a coherent approach among national and international actors in support of the political and electoral processes. My Special Representative is working closely with my Special Envoy for the Great Lakes Region, Said Djinnit, to mobilize regional support for the implementation of the political agreement of 31 December. On 26 April, my Special Envoy met the President of the Congo, Denis Sassou Nguesso, who advocated greater engagement by the United Nations and the African Union and expressed his readiness to work closely with the United Nations, the African Union and other regional organizations to support the implementation of the political agreement and the holding of timely elections. My Special Envoy also met senior government officials from Angola and the acting Chair of the International Conference on the Great Lakes Region and engaged with the President of Guinea and Chairperson of the African Union, Alpha Condé, and the Commissioner for Peace and Security of the African Union, as well as with members of the International Contact Group for the Great Lakes Region.

VII. Observations

16. The full implementation, in good faith, of the political agreement of 31 December, as stipulated in resolution 2348 (2017), remains the only viable path towards the creation of a peaceful political climate and the holding of credible elections in the Democratic Republic of the Congo. Certain factors could, however, have a negative impact on the electoral process. Political uncertainty, coupled with diminishing political space, intensified violence in the Kasai region, the fragile security situation in some areas of the eastern Democratic Republic of the Congo and rapidly deteriorating socioeconomic conditions risk compounding an already difficult situation. In the present context, spontaneous, popular protests could escalate as a result of the socioeconomic situation and the growing disconnect between decision makers and their political constituencies.

17. The signing of the special arrangements was deliberately held under the auspices of the Presidents of the two chambers of Parliament to reiterate the primacy of the Constitution over political processes. The signing of the special arrangements and the formation of the transitional government de facto conclude the national dialogue, theoretically paving the way for the appointment of the Chair of the National Council for Oversight of the Agreement and the Electoral Process and

the establishment of other transitional arrangements. However, disagreement persists among political leaders over the functioning of key transitional institutions. The process for the appointment of the Chair of the Council should be as inclusive and credible as possible to contribute to the swift and effective implementation of the political agreement.

18. The political process continues to be hampered by inflexibility and grandstanding, rather than being facilitated by the good faith and spirit of compromise required of all parties. If this continues, political tensions could reignite and the electoral process could experience further delays. The Government should pursue the confidence-building measures envisaged in the agreement as a gesture of goodwill and ensure respect for all human rights and fundamental freedoms guaranteed in the Constitution. The opposition should exercise restraint and engage constructively in the political process.

19. Continued reports of violations of civil and political rights perpetrated by national security forces, as well as national and local authorities, are of concern. The Government should take the steps necessary to bring the perpetrators to justice and create conditions conducive to the holding of peaceful, credible and inclusive elections, including by ceasing restrictions on public freedoms.

20. It is critical that every effort be made to ensure the completion of the voter registration process throughout the country, including in the Kasai provinces, within the time frame established by the Independent National Electoral Commission, in order to enable the holding of credible elections in line with the agreement. With an estimated 6 million to 8 million voters living in the Kasai provinces (20 per cent of estimated voters nationwide), the region represents a challenge for the inclusivity and credibility of the update of the voter register and the subsequent elections. The Commission should ensure an inclusive voter registration process, pursue awareness-raising to ensure a high turnout throughout the country and publish the electoral calendar without delay.

21. MONUSCO will continue to support the creation of an environment conducive to peaceful, credible, inclusive and timely elections. To that end, the Mission will continue to provide support for the implementation of the agreement, in accordance with its mandate, with a view to maintaining momentum towards the holding of elections. In addition, the Mission will continue its robust advocacy for the respect of human rights and democratic space, exercise good offices and provide technical and logistical support for the timely completion of the revision of the voter register and the smooth roll-out of the electoral process.

22. My Special Representative and my Special Envoy will pursue coordinated good offices with other relevant regional and international stakeholders to ensure the provision of concerted support for the full implementation of the agreement with a view to enabling the timely organization of elections.